

(2007) 10 CHH CK 0006
In the Chhattisgarh High Court

Godawari Power and Ispat Limited

APPELLANT

Vs

South Eastern Coalfields Limited and Maruti Clean Coal and
Power Ltd.

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151
Constitution of India, 1950 — Article 14, 226, 227

Citation : (2007) 10 CHH CK 0006

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—This petition, under Article 226/227 of the Constitution of India, seeks a writ in the nature of mandamus directing the respondent No. 1 (South Eastern Coal Fields Limited) to issue the delivery orders/release orders and transit passes for monthly requirement of "F" grade coal to the petitioner, totaling to annual quantity of 3,27,204 metric ton, through the respondent No. 2 (Maruti Clean Coal & Power Ltd.) washery for onward transportation to the petitioner's sponge iron/power plant, and a writ in the nature of prohibition, restraining the officers/employees of the respondent No. 1 from creating any obstruction in the delivery of coal, purchased by the petitioner under its linkage supply, from the respondent No. 1 to the respondent No. 2 washery.

2. The brief facts in nutshell, as projected by the petitioner, leading to filing of this writ petition are that the petitioner is a company engaged in the business of running sponge iron plant at Siltara Industrial Area, Raipur having captive power plant for the purpose of generation of electricity. The petitioner obtained coal linkage supply order dated 19/20 September, 2006 (Annexure P/13) of `F" grade coal from the Ministry of Coal, Government of India for 3,27,204 metric ton per annum for the petitioner's plant. The coal consumed for the purpose of the sponge iron plant and captive power plant has to be washed for giving more

effective, beneficial and advantageous results. The washing reduces the ash content of the coal from the normal content of approximately 42 to 44% to 32 to 34%. This also reduces the pollution during the transportation and reduces the cost of transportation of coal itself. Use of the washed coal gives better quality to the sponge iron and better generation of power. The respondent No. 2 has set up a washery having a capacity of washing of 10 metric ton coal near Dipika mines, in district Korba, of the respondent No. 1. The petitioner entered into an memorandum of understanding on 27th March 2007 (Annexure P/1) with the respondent No. 2, wherein it was provided that the petitioner would supply coal to the respondent No. 2 for washing of annual supply of raw coal from the respondent No. 1 to the tune of 3,27,204 tones per annum. The petitioner, accordingly, informed the respondent No. 1 by letter dated 29.3.2007 (Annexure P/2) requesting the respondent No. 1 to give delivery through the respondent No. 2. On 9.4.2007 (Annexure R-1/1), the petitioner wrote a letter to the respondent No. 1 to issue delivery order through M/s Chhattisgarh Power and Coal Beneficiation Ltd., Bilaspur. Thereafter the petition was filed on 10.5.2007 seeking the aforementioned relief.

3. Again on 25.6.2007 (Annexure P/5) the petitioner sent a detailed letter to the Chairman-cum-Managing Director of the respondent No. 1 stating that the washery of the Chhattisgarh Power and Coal Beneficiation Limited (hereinafter referred to as "CPCBL") had its washery about 100 k.m. away from DipikaGevra mines of the S.E.C.L. Transporting raw coal for this distance was not only expensive but also not in the interest of the environment, therefore, the delivery orders for supply of the coal be issued through the respondent No. 2 as the washery of the respondent No. 2, is located at 4 to 5 k.m. away from Dipika-Gevra mines.

4. The respondent No. 1 by letter dated 26/27.6.2007 (Annexure "B" to the Additional Affidavit filed by the petitioner company on 30.8.2007) declined to release coal through the respondent No. 2 on the ground that the validity of the allotment of land and title of the land to the washery is pending adjudication before the Civil Court, Katghora and the status quo order passed by the Civil Court is in operation. It was further stated that since the purported coal washery was on the land which is in dispute, it was not possible for the respondent No. 1 to order release of coal through the respondent No. 2.

5. During the pendency of the instant petition one application for intervention and two applications for impleadment were filed. I.A. No. 5 : Application filed by M/s Kartikay Coal Washeries Pvt. Ltd. seeking permission for intervention.

6. This application was filed on 24.8.2007 by M/s Kartikay Coal Washeries Pvt. Ltd., 18 Basant Enclave, Road Tula Ram Marg, New Delhi, seeking permission to intervene in the petition. Shri K.N. Bhatt, learned senior Counsel appearing for the applicant/intervener would submit that the intervener has filed W.P. No. 4000/2007, wherein the disputes with regard to grant of allotment of the disputed land and erection of washery of the respondent No. 2 on the said land is

in question. The intervener/applicant claims that it has direct interest on the land on which washery of the respondent No. 2 is to be constructed. Learned Counsel further submits that there is a status quo order passed by the competent Civil Court with regard to the construction or otherwise of a project or plant on the land. The instant petition has been filed by the petitioner to circumvent the order of the Civil Court. It is submitted that the plant and machineries have been installed in Khasra No. 850 of village Ratija and the intervener claims interest in the same Khasra number. On perusal of Annexure I/1, it appears that the intervener has applied for establishment of a coal washery on 13 acres of vacant land in Khasra No. 850/23 of village Ratija.

7. Shri Yashank Adhyaru, learned senior Counsel appearing for the petitioner would submit that the intervention application filed by M/s Kartikay Coal Washeries Pvt. Ltd. deserves to be dismissed at the threshold. The Intervener had filed the application for impleadment in the pending Civil Suit No. 90-A/2004, filed by the respondent No. 1 against the State Government and the respondent No. 2. The Civil Judge Class-II Katghora, District - Korba by order dated 21.2.2007 allowed the application of the Intervener for impleadment. Against the said order a writ petition under Article 227 of the Constitution of India, being W.P.(C) No. 1881/2007, was preferred to this Court, which was allowed vide order dated 15th May, 2007, holding that M/s Kartikay Coal Washeries Pvt. Ltd. was neither a necessary nor a proper party for adjudication of the dispute involved in the Civil Suit No. 90-A/2004 S.E.C.L. v. State of Chhattisgarh and Ors. The order dated 21.2.2007, impleading the intervener as party respondent was set aside.

8. The contention of learned Counsel for the petitioner merits acceptance. It appears that there is no modification or stay of the order dated 15.5.2007 passed by this Court by any superior Court. Even otherwise, the applicant has not shown any material to indicate that the interest of the applicant would be affected by an order passed in the present writ petition. The present writ petition does not deal with the title or allotment of the land in dispute. The present petition seeks only a direction against the respondent No. 1 to permit the petitioner to lift the coal under the delivery order through the respondent No. 2 for the purpose of consumption in its project at Siltara, Raipur after washing through the respondent No. 2. For the reasons stated hereinabove, the application for intervention, filed by M/s Kartikay Coal Washeries Pvt. Ltd., is rejected. I.A. No. 2 : Application filed by Rashtriya Colliery Mazdoor Congress (Intuc) for impleadment as party-respondent.

9. This application was filed on 21.6.2007, by Rashtriya Colliery Mazdoor Congress (Intuc), which claims to be a Registered Trade Union under the provisions of the Trade Unions Act, 1929, bearing registration No. 22, through its General Secretary (Gevra Area) Shri Vyas Narain Shukla, Urja Nagar, Gevra, Korba. Shri M.L. Verma, learned senior Counsel appearing for the applicant would submit that the applicant has questioned the allotment/lease of the land to the

respondent No. 2 in the public interest litigation petition, pending in this Court. The dispute regarding title of the land allotted in favour of the respondent No. 2 is pending consideration in the Court of Civil Judge Class II Katghora, District Korba. The applicant/petitioner has filed W.P. No. 4147/2003 on 9.12.2003 *Rashtriya Koyla Khadan Mazdoor Sangh and Ors. v. State of Chhattisgarh and Ors.* challenging the grant of lease/allotment of land to the respondent No. 2 by the State Government on the ground of procedural impropriety. The said writ petition is pending consideration before the Division Bench.

10. Learned Counsel would submit that in the instant petition, the petitioner is seeking a writ or direction directing the respondent No. 1 to issue delivery order through the respondent No. 2. The construction of the washery of the respondent No. 2 on the land, grant of which is in question before the Division Bench of this Court, the Civil Court has granted an interim order directing the parties to maintain status quo on 20.1.2005 and in view of the said order the respondent No. 2 ought not to have proceeded with construction and if the construction was done, that is illegal and unauthorized. Therefore, in order to circumvent the whole legal encumbrances, when the respondent No. 2 does not have any justifiable right, the instant petition has been preferred seeking indulgence of this Court in order to espouse the cause of the respondent No. 2. Furthermore, the petitioner cannot seek for any direction from this Court as to with whom and how respondent No. 1 shall maintain its supply, as the same is purely the prerogative of the respondent No. 1.

11. Learned Counsel would further submit that it has been decided by the S.E.C.L. to reserve the said land for rehabilitation of the project by the respondent No. 1. The entire disputed land over which the respondent No. 2 had constructed the instant washery was reserved and earmarked for rehabilitation of the project affected persons by the respondent No. 1, most of whom have been employed by the S.E.C.L. and are presently members of the applicant Union. As a result, the wrongful allotment of the land to the respondent No. 2 usurping the powers by the State Government in an absolutely highhanded manner, resulted in undue hardship in implementing the rehabilitation project in favour of the members of the applicant Union. Consequently, the applicant Union is interested and directly affected by the outcome of the instant petition.

12. Per contra, it was submitted by Shri Adhyaru, learned senior Counsel appearing for the petitioner that the impleadment application being I.A. No. 2, purported to have been filed by *Rashtriya Colliery Mazdoor Congress (Intuc)* through Shri Vyas Narayan Shukla is frivolous, vexatious and an attempt to mislead this Court and thus a blatant abuse of process of law. It is submitted that the above mentioned Union is neither a Union of the petitioner, nor a Union of Maruti Clean Coal & Power Ltd. and thus in no way could be affected by the supply of coal to the respondent No. 2 for washing of coal. Shri Vyas Narayan Shukla, who has filed the instant impleadment application on behalf of *Rashtriya Colliery Mazdoor Congress (Intuc)* has mislead this Court by concealing the

material fact about institution of a suit on behalf of another Union being suit No. 116-A of 2007 on 7th July, 2007 and obtaining an ex-parte order dated 7th July, 2007 against SECL restraining SECL from executing a lease deed in favour of Maruti Clean Coal & Power Ltd. on without prejudice basis. Shri Vyas Narayan Shukla concealed the fact of the above referred suit and ex-parte order dated 12th July 2007.

13. Further, it was contended that Rashtriya Colliery Mazdoor Congress (Intuc) had filed the instant impleadment application on 21.6.2007 wherein, in para 17, it has contended that the land allotted to Maruti Clean Coal & Power Ltd. was earmarked and identified by SECL for welfare of Union of SECL. If that was the case, there was no need for Shri Vyas Narayan Shukla to file a separate suit in his personal capacity and in representative capacity on 7th July, 2007, again alleging that the land had been earmarked and identified for welfare of Union of SECL, when the issue was already pending before this Court. It was next submitted that in the present impleadment application, Shri Vyas Narayan Shukla has miserably failed to adduce any evidence or document to substantiate his allegation that the land being allotted to Maruti Clean Coal & Power Ltd. was identified or earmarked by SECL for welfare of workers of SECL. Therefore, it is most humbly submitted that the impleadment application filed by Rashtriya Colliery Mazdoor Congress (Intuc) ought to be dismissed.

14. Having heard learned Counsel for the parties and perusing the records appended to the pleadings, it is evident that the applicant is not a party in the pending Civil Suit No. 90-A/2004 S.E.C.L. v. State of Chhattisgarh and Ors., pending in the Court of Civil Judge Class-II, Katghora, wherein the title and ownership right over the land allotted to the respondent No. 2 by the State Government is in question. Writ Petition being W.P. No. 4147/2003, filed by the Rashtriya Koyla Mazdoor Khadan Sangh, questioning the validity of the allotment of the land by the State Government to the respondent No. 2 is under consideration before a Division Bench of this Court. It is admitted case of all the parties that the Civil Court of Katghora in the Civil Suit No. 90-A/2004 has passed an order on 20.1.2005 (Annexure A/2 to the application filed by the applicant) to maintain status quo, which reads as under:

oknh vf/koDrk Jh nqcs us mifLFkr gksdj ;g fuosnu fd;k fd izdj.k esa izLrqr varfje vkosnu ds tokc is" k djus gsrq yach frfFk nh xbZ gS ,slh fLFkfr esa ;Fkk fLFkfr cuk;s j[kus dk vkns" k fn;k tkos A bl ij izfroknh dza- 2 ds vf/koDrk }kjk vkifRr O;Dr fd;k x;k A izfroknh dz0 1 dh vksj ls dksbZ vkifRr O;Dr ugha fd;k x;k A

fuosnu ij fopkj fd;k A pwafd izdj.k esa izLrqr varfje vkosnu dk tokc is" k ugha fd;k x;k gS rFkk is" k djus gsrq le; fn;s tkus dk fuosnu fd;k x;k gS ,slh fLFkfr esa ;fn mHk; i{k dks ;Fkk fLFkfr cuk;s j[kus dk vkns" k fn;k x;k gS rks fdLh Hkh i{k dks gkfu gksus dh laHkkouk ugha gS A Qyr% oknh vf/koDrk dh vksj ls izLrqr fuosnu Lohdkj djrs gq, mHk; i{k dks ;g vknsf"kr fd;k tkrk gS fd vxkeh frfFk rd okn Hkwfe ij ;Fkk fLFkfr cuk;s j[ksa A

15. Learned senior Counsel appearing for the applicant heavily relied on a decision of the Supreme Court in the case of Razia Begum v. Sahebzadi Anwar Begum and Ors. 1, wherein it is held as under:

(13) As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under Rule 10 of Order 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Section 115 of the Code;

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;....

16. Learned Counsel further cited an order dated 27.2.2007 passed by the Supreme Court in Civil Appeal No. 1113 of 2007 wherein, in a contempt petition the implementing agency of the project was not arrayed as party/respondent. The Supreme Court observed as under:

Ultimately, if an order, one way or the other, is passed by the High Court in a Contempt Proceedings, the same may adversely affect the appellants.

17. Applying the proposition enunciated as aforesaid, to the facts of the present case, it is clear that the applicant is in no way affected if a delivery order to the petitioner through the respondent No. 2 is issued. The applicant may at the most be interested in the title of the land which is pending consideration before the Civil Court, Katgrhora. It is beyond comprehension as to how the members of the applicant Union would suffer irreparable loss, if the delivery order of the coal to the petitioner is issued through the respondent No. 2. Learned Counsel has referred to a para in the communication dated 28.1.2007 (filed as document "D" in the objection to the rejoinder), addressed to the Chairman, Coal India Ltd. by the Chairman-cum-Managing Director, S.E.C.L. wherein it was stated as under:

Reg. Rehabilitation:

i. Requirement of land for rehabilitation of project affected persons of Depika project was assessed at 100 Ha. It was discussed in the 361st FD's meet held on 26.04.2006 and it was decided to take back the land occupied by the M/s MCCPL and apprise the MOC about the decision of the management. Environment aspect will also to be seen by SECL while rehabilitating the project affected persons. Environment management by planting large number of trees, afforestation, water sprinkling may change the environment.

18. This communication does not confer any right on the applicant to claim ownership or propriety over the land. The terms and conditions of the coal supply is governed by the fuel supply agreement and there is no contemplation of any concession in price or otherwise in favour of the petitioner or the respondent No. 2. I am not expressing any opinion or making any observation on the dispute of the land in respect of the title and ownership, pending consideration in the Civil Suit No. 90-A/2004, before the Civil Judge Class-II, Katghora or on the validity of the grant of lease/allotment of the land in favour of the respondent No. 2, which is pending consideration in other writ petition and before a Division Bench of this Court.

19. Without expressing any opinion on the title, ownership, purpose of the land or on the validity of the allotment of land, I am of the considered view that the applicant is neither a necessary nor a proper party to be impleaded as party respondent in the present petition. Thus, the application (I.A. No. 2) is rejected. I.A. No. 7 : Application filed by Mahabir Global Coal Limited for Impleadment. I.A.No.10: Application filed by Mahabir Global Coal Limited for Amendment in the application (I.A.No.7) for impleadment.

20. Shri Ravindra Shrivastava and Shri Manindra Shrivastava, learned senior Counsel appearing for the applicant would submit that this petition be heard along with other writ petitions being W.P.(C) No. 3834/2007 Mahabir Global Limited v. Union of India and Ors. W.P. (C) No. 3094/2007 Maruti Clean Coal & Power Ltd. Raipur v. S.E.C.L. and Anr. and W.P.(C) No. 4000/2007 Kartikay Coal Washeries Pvt. Ltd. v. Union of India and Ors. Learned Counsel relies on an order dated 12.7.2007 passed by this Court in the instant petition i.e. W.P.(C) No. 3089/2007 and above referred three writ petitions, according to which on the request of learned Counsel appearing for the parties these petitions were clubbed together for hearing. According to Shri Ravindra Shrivastava, the issue involved in other three writ petitions are interconnected with the issue involved in this petition. Learned Counsel would further submit that this petition is an attempt to circumvent the status quo order dated 20.1.2005 passed by the Civil Judge Class-II, Katghora, in the pending Civil Suit No. 90-A/2004.

21. On 3.10.2007 at the request of learned Counsel appearing for the parties, including Shri Manindra Shrivastava, learned senior Counsel appearing for the applicant Mahabir Global Coal Limited, three writ petitions i.e. W.P.(C) Nos. 3834/2007, 3094/2007 and 4000/2007 were delinked from the instant W.P.(C) No. 3089/2007 and they were directed for separate listing in the week commencing from 29th October, 2007. At this stage learned Counsel appearing for the applicant takes a contrary stand and prays that this matter be heard along with other writ petitions. I do not find any justification at this stage when the arguments of all the parties, except the argument of learned Counsel appearing for the applicant in I.A. No. 7 and I.A. No. 10, have been concluded. The issues involved in other three petitions have nothing to do with the issue involved in the present matter, as the present petition filed by the petitioner

seeks an order/direction against the respondent No. 1 to issue delivery order of the coal in favour of the petitioner being a linkage consumer through the respondent No. 2. In view of that the prayer to adjourn this matter and continue hearing with other three matters is rejected.

22. In support of the application (I.A. No. 7 and I.A. No. 10) for impleadment as party/respondent, in the present writ petition, learned Counsel would submit that the applicant has a direct interest involved in the pith and substance of the relief prayed for in the instant petition. The decision of the same would have serious and direct impact on the rights of the applicant. It is further submitted that the applicant had made an application for allotment of land which could not be favorably considered by the respondent No. 1/S.E.C.L., as there was no land available and the land was in occupation of the respondent No. 2, which was described as illegal occupation of the encroacher.

23. Learned Counsel would further submit that if the relief prayed for in this petition is granted that would legalize the allotment of the land in favour of the respondent No. 2, and that would substantially affect the right of the applicant.

24. Shri Shrivastava, learned senior Counsel, would further submit that there is a direct conflict for allotment of the land between the applicant and the respondent No. 2, as both are opposing each other in their own respective writ petitions i.e. W.P.(C) No. 3094/2007 and W.P.(C) No. 3834/2007. Therefore, the applicant is a proper party in this writ petition.

25. Learned Counsel relied on the decisions, namely : (i) Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar 2; (ii) Prabodh Verma and Ors. ect. Etc. v. State of Uttar Pradesh and Ors. etc. 3; and (iii) U.P. Awas Evam Vikas Parishad v. Gyan Devi (dead) by Lrs. and Ors. 4.

26. In opposition, Shri Yashank Adhyaru, learned senior Counsel appearing for the petitioner would submit that the applicant Mahabir Global Coal Limited is neither a party in the title suit pending in the Civil Court, Katghora nor attempted to get impleaded thereon as a party/respondent, nor in any other petitions pending before this Court, wherein the allotment of the land by the Government to the respondent No. 2 is in question. The applicant claims the interest and right on the basis of his application dated 28.9.2005 made to the respondent No. 1 for allotment of land to establish a coal washery which was rejected by the respondent No. 1. The contention of the applicant has no basis to question either the delivery order or fuel supply agreement or right of the petitioner to get coal supplied through the respondent No. 2 washery.

27. Having heard learned Counsel for the parties, it is evident that the applicant has no direct interest in the dispute involved in this petition. The applicant is, further, not a party to the title suit pending in the Civil Court, Katghora and any other petitions which are pending in the High Court. The claim of the petitioner that the applicant is a proper party arises from the facts that the applicant made an application on 28.9.2005, much after the land in question in respect of 37.91

acres was allotted to the respondent No. 2 by the Government of Chhattisgarh on 5.12.2002, which is under challenge in various writ petitions pending before the Division Bench. The applicant has made an application for allotment of land to establish a coal washery which was rejected by the respondent No. 1. The applicant has not challenged anywhere the rejection of his application except this application (I.A. No. 7) for impleading as a proper party in the present writ petition.

28. In the matter of Udit Narain Singh Malpaharia (*supra*) relied on by learned Counsel for the applicant the Supreme Court observed as under:

A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

which was referred and upheld subsequently in the case of U.P. Awasthi Vikas Parishad (*supra*).

29. The applicant has failed to establish as to how the presence of the applicant is necessary for complete and final decision of the dispute involved in the proceedings. The applicant has not been assured that the land would be allotted to the applicant for establishment of the washery and as such the applicant would suffer if the respondent No. 1 is directed to issue delivery order in favour of the petitioner to get the same washed through the respondent No. 2.

30. The Supreme Court in Razia Begum (*supra*), while considering the question of addition of party in an application under Order 1 Rule 10(2) of the C.P.C. held as under:

13 (2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subjectmatter of the litigation;

31. The Supreme Court in J.J. Lal Pvt. Ltd. and Ors. v. M.R. Murali and Ors. 5 has observed that in the case of title between two persons, the presence of third party is neither necessary for the decision of the question involved, nor his presence is necessary to enable the Court effectually and completely to adjudicate upon and settle the questions involved in the proceedings.

32. Applying the well settled principles derived from the decisions cited above to the facts of the case, the applicant is neither a necessary nor a proper party to the dispute involved in the present petition. Thus the application (I.A. No.7) for impleadment is rejected. On the Writ Petition.

33. Shri Yashank Adhyaru, learned senior Counsel appearing for the petitioner would submit that the petitioner is a company engaged in the business of running sponge iron plant at Siltara Industrial Area, Raipur having captive power plant for the purpose of generation of electricity. The petitioner obtained coal

linkage supply order dated 19/20 September, 2006 (Annexure P/13) of 'F' grade coal from the Ministry of Coal, Government of India for 3,27,204 metric ton per annum. The respondent No. 2 has set up a washery having a capacity of washing of 10 metric ton coal near Dipika mines, in district Korba. The petitioner entered into an memorandum of understanding on 27th March 2007 (Annexure P/1) with the respondent No. 2 wherein it was provided that the petitioner would supply coal to the respondent No. 2 for washing of annual supply of raw coal from the respondent No. 1 to the tune of 3,27,204 tones per annum. The petitioner, accordingly, informed the respondent No. 1 by letter dated 29.3.2007 (Annexure P/2) requesting the respondent No. 1 to give delivery through the respondent No. 2. He further contended that previously the petitioner was getting the coal washed through M/s Chhattisgarh Power and Coal Beneficiation Ltd., Bilaspur but due to long distance the transportation charges were high and as such the petitioner want to get the coal washed through the respondent No. 2. The respondent No. 1 did not accede to the request of the petitioner and as such, the petitioner had no option but to receive the delivery of coal through the washery of M/s Chhattisgarh Power and Coal Beneficiation Ltd. Accordingly a letter dated 9.4.2007 (Annexure R-1/1), addressed to the Chief General Manager/General Manager (S & M) of the respondent No. 1 S.E.C.L was written by the petitioner. The respondent No. 1 by communication dated 26/27-6-2007 declined to accede the request of the petitioner in writing stating that the validity of the allotment of the land, setting of the washery and title of the land is pending adjudication before the Civil Judge, Class-II, Katghora and the High Court of Chhattisgarh, the proceedings for contempt and status quo order are operational in the Civil Court, and no permission has been granted by the Ministry of Coal till date to the respondent No. 2 to open the coal washery plant.

34. Shri Adhyaru, learned senior Counsel would further contend that if the petitioner has its coal washed by the respondent No. 2, instead of M/s Chhattisgarh Power and Coal Beneficiation Ltd., its saving per metric ton washed coal would be Rs. 294/- which would come to Rs. 9,61,97,976/- per annum for the total annual coal linkage. The petitioner while reiterating its request for delivery through the respondent No. 2 from 1st July, 2007 onwards, has, in its letter dated 25th June, 2007 (Annexure P/5) has given a break-up of the above savings and loss suffered and the contents of the same may be read as part and parcel of the submissions made in support of the instant petition.

35. Learned Counsel appearing for the petitioner would submit that the action of the respondent No. 1 by denying delivery of coal for washing through the respondent No. 2 is discriminatory, arbitrary and unreasonable. Admittedly, the petitioner is a linkage consumer as per the order dated September 19/20, 2006 (Annexure P/13) for supply of coal. Under the coal supply agreement dated 23.8.2006 which was executed on 11th August, 2006 for five years, the respondent No. 1 is in no way responsible or liable for the security or safeguard of the coal so transferred. It is also not a liability of the seller/respondent No. 1 towards increased freight or transportation costs, as regards any diversion of

wagons/rakes/road transport en-route, for whatever causes, by Railways, or road transporter or any other agency.

36. It was further contended by the Counsel that once the delivery of the coal is affected, the petitioner is free to get it washed through any agency which is convenient and beneficial to the petitioner. The reasons stated by the respondent No. 1 while refusing the supply of coal for getting it washed through the respondent No. 2 is not tenable. The dispute pending in the Civil Court, Katghora is with regard to the title of the land and the disputes pending in the other writ petitions are in respect of the validity of the grant of allotment of the land to the respondent No. 2. There is no injunction or stay order in respect of construction of washery and operation thereafter on the land allotted by the government of Chhattisgarh.

37. Learned Counsel would further submit that the allotment or construction of the washery plant cannot be held as illegal till it is declared by a Superior Authority or a Court of law, where the several matters are pending consideration.

38. Shri Adhyaru, would further contend that the status quo order granted by the Civil Judge, Class-II, Katghora in the pending title suit No. 90-A/2004 has to be understood in the context of the prayer made in the suit as well as in the application for grant of interim relief. The prayer in the suit as well as in the application for grant of interim relief clearly indicates that the status quo was with respect to cutting of trees on the land in question which was the subject matter of the title suit.

39. Learned Counsel would next contend that the status quo order dated 20.1.2005 is clear from the fact that this Court in W.P. No. 1264/2003 Alok Nigam v. Union of India and Ors., wherein the allotment of the land in question to the respondent No. 2 was under challenge, directed the parties to maintain status quo regarding the property in question and further not to cut the trees standing on the land until further orders on 24.4.2003. The said stay order was subsequently modified by order dated 9.5.2003 to the extent that the respondent No. 2 was allowed to continue with the construction of the main building up to level of setting up of the machinery and if any adverse order is passed by this Court then the respondent No. 2 would remove the construction. It was further clarified that beyond the completion of the construction no machinery would be set up and trees standing on the land in question would not be cut. The Supreme Court on 24.11.2003 in SLP (Civil) No. 22531/2003 preferred against the order dated 9.5.2003 passed by this Court in W.P. No. 1264/2003, directed that "there shall be no further construction". Subsequently by order dated 10th April, 2006 the SLP was dismissed and consequently the order dated 24.11.2003 granting stay of further construction was vacated.

40. Subsequently, the Supreme Court in the pending SLP (Civil) No. 20238 of 2006 Maruti Clean Coal & Power Ltd. v. B.L. Wadhera and Ors. has passed the interim order dated 27.11.2006 to the effect that "the operation of the Judgment

and Order dated 24.04.2003 and 09.05.2003 of the High Court of Chhattisgarh at Bilaspur in W.P. No. 1264 of 2003 be and is hereby stayed". Thus, at present, there is no order restraining construction of the washery plant on the land and operation thereof.

41. Shri Adhyaru, learned senior Counsel on the question of maintainability of the petition would submit that it is well settled that in a case of contract normally this Court should not intervene. However, in the facts of the case, when the refusal to issue delivery order is based on account of a judicial order passed by the Civil Court, or on the ground of pendency of several matters with regard to the dispute of title of the land, allotment of the land, the impugned order becomes arbitrary and unreasonable, as the same was passed without application of mind and without understanding the purport of the status quo order dated 20.1.2005, granted by the Civil Court, Katghora. Thus, this Court is requested to exercise its extra ordinary, discretionary jurisdiction of judicial review of the impugned order dated 26/27.6.2007, which is, per se, illegal, arbitrary and discriminatory. The Counsel does not press the prayer for grant of writ in the nature of Prohibition.

42. Learned Counsel for the petitioner would further contend that the respondent No. 1 had approached this Court in other writ petition on the basis of the direction issued by the Ministry of Coal to execute the agreement for allotment of the disputed land in favour of the respondent No. 2.

43. Per contra, Shri P.S. Koshy and Shri Ajit K. Sinha, learned Counsel appearing for the respondent No. 1 would submit that the relief claimed by the petitioner cannot be granted as there is a contractual agreement with the petitioner and if there is any violation of the contractual agreement, the petitioner can take recourse to an arbitration clause for resolving the dispute. Learned Counsel would further submit that the respondent No. 1 is competent to reject or refuse the issue of delivery order as per the terms and conditions mentioned on the reverse of the delivery order. The respondent No. 1 being a party to the title suit of the land allotted to the respondent No. 2 by the Government of Chhattisgarh, and in other writ petitions pending before this Court, wherein the validity of the grant of land by the Government of Chhattisgarh is in question, has rightly rejected the request of the petitioner for supply of coal through respondent No. 2.

44. The status quo order dated 20.1.2005, directing to maintain status quo with regard to the land includes even the construction and operation of the coal washery by the respondent No. 2 and a contempt application is also pending in the Civil Court, Katghora. Knowing fully well that the title of the land and allotment of the grant of land is pending consideration before the Civil Court as well as in this High Court, the respondent No. 1 would not issue delivery order in favour of the petitioner through the respondent No. 2. It is true that the orders passed by this Court staying the construction on the land have been stayed by the Supreme Court on 27.11.2006. However, the status quo order passed by the Civil Court is still in operation. Further the respondent No. 2 has not been

granted permission to operate the coal washery by the Ministry of Coal, thus, the respondent No. 1 cannot issue delivery order of coal to be washed through the respondent No. 2, which is in dispute.

45. It was next contended that the petition has become infructuous as the letter dated 26/27.7.2007, whereby the respondent No. 1 has declined to issue delivery order for supply of coal, through the respondent No. 2, has not been challenged in this Court and the petitioner has agreed to get supply of coal through the M/s Chhattisgarh Power and Coal Beneficiation Ltd. vide its letter dated 9.4.2007. Learned Counsel relied on a decision in *ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation of India Ltd. and Ors.* 6.

46. It is admitted that an application for permitting to execute the agreement for allotment of the disputed land was submitted in other writ petition, subject to the following conditions:

(a) M/s Maruti Clean Coal and Power limited has to agree that the land in dispute is one and the same; and

(b) In case the Hon'ble Court accepts our application for executing the lease in favour of MCCPL then the SECL will ensure before executing the lease deed that it is free from all encumbrances.

47. Shri C.S. Vaidyanathan, learned senior Counsel appearing for the respondent No. 2, while supporting the case of the petitioner, would submit that the petitioner is a linkage consumer of the coal supplied by the respondent No. 1. The respondent No. 2 was allotted the land for construction of washery way back on 5.12.2002 by the State Government through the Chhattisgarh State Industrial Development Corporation. The possession of the said land was handed over, soon thereafter to the respondent No. 2. The respondent No. 1 filed a civil suit questioning the title of the land and further praying that the respondent No. 2 be restrained from cutting of the trees as that would cause damage to the forest. Accordingly, the status quo order was passed, after passing of the orders dated 24.4.2003 and 9.5.2003 by this Court in W.P. No. 1264/2003, whereby firstly the construction was stayed, thereafter the construction was permitted up to the main building up to the level of setting up of the machinery. The said orders have been stayed by order dated 27.11.2006 passed by the Supreme Court in the pending S.L.P.(C) No. 20238 of 2006 and as such, at present there is no injunction or prohibition for construction of the washery plant and operation, thereafter.

48. The respondent No. 2 has obtained all necessary clearances from the government, forest department and other concerned authorities to operate the washery plant. There is no other requirement left for operation of washery plant. The washery plant has been fully constructed and is operational. The petitioner is a sister concern of the respondent No. 2 as a linkage consumer of the coal. Washing of coal through the washery plant of the respondent No. 2 would save a sum of Rs. 9,61,97,976/- of the petitioner and further the respondent No. 2 has

set up the plant based on the latest technology, which would give better quality of coal without causing environmental damages. The plant has been installed in accordance with the washery policy of the government i.e. Annexure P/14. The qualifying requirement of the washery operator is to have an M.O.U. with the consumer or group of consumers, who has a fuel supply agreement or long term coal linkage with a coal company, for production of predetermined quantity of washed coal, middling if any and rejects. There should be a firm financing plan etc.

49. Learned Counsel would further submit that the washery plant has qualified for operation as there is a memorandum of agreement with the petitioner who has a long term coal linkage with the respondent No. 1. The letter dated 25/26-6-2007 and oral rejection to issue delivery order through the respondent No. 2 is illegal, discriminatory, arbitrary and unconstitutional. With regard to the effect of status quo order dated 20.1.2005 granted by the Civil Court, Katghora, learned Counsel adopts the arguments advanced by learned Counsel appearing for the petitioner.

50. I have heard learned Counsel for the parties and perused the pleadings and documents appended thereto.

51. The respondent No. 1 has raised objection that the present petition is not maintainable on the ground, that the right of the petitioner flows from the coal supply agreement as well as on the terms and conditions stated on the reverse of the delivery order. It was further argued that there is an arbitration clause in the agreement, therefore, this petition under Article 226 of the Constitution of India is not maintainable.

52. It is well settled that the performance of a contract would not be enforced by issuing a writ in the nature of mandamus. In the present case, the dispute does not arise from the provisions of the contract and delivery order. The respondent No. 1 had not raised any objection to issue a delivery order to the petitioner through any other washery but through the respondent No. 2, on the ground of a judicial order granting status quo and pendency of the writ petitions before this Court, wherein the allotment of the land by the State Government is under challenge. Thus, this petition is not for damages or enforcement of the performance of a contract under the provisions of the Specific Relief Act, 1963. The order, declining request of the petitioner to issue delivery order through the respondent No. 2, it appears, had been issued without application of mind and without appreciating the legal position.

53. In the matter of Mahabir Auto Stores and Ors. v. Indian Oil Corporation and Ors. 7 the Supreme Court observed as under:

17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr. Salve sought to

urge that there are certain cases under Article 14 of arbitrary exercise of such "power" and not cases of exercise of a "right" arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.

18. ...It is true that there is discrimination between power and right but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.

54. In the matter of ABL International Ltd. and another (Supra), the Supreme Court observed as under:

10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in K.N. Guruswamy v. State of Mysore 1 was followed subsequently by this Court in the case of D.F.O. v. Ram Sanahi Singh 2 wherein this Court held : SCC p. 865, para 4.

By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy case¹ there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power See Whirlpool Corporation v. Registrar of Trade Marks 15. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the

Court thinks it necessary to exercise the said jurisdiction.

55. In the facts and circumstances of the present case, only interpretation of facts is not involved. The dispute of facts and the dispute of applicability of the law and order cannot be resolved by any other forum or by the arbitrator under an arbitration clause. Thus, this Court is competent to exercise its extraordinary, discretionary jurisdiction to resolve the dispute involved herein. See Ramchandra Murarilal Bhattad and Ors. v. State of Maharashtra and Ors. 8.

56. Applying the well settled principles of law to the facts of the case, this petition cannot be thrown on the ground that the dispute arises from a contract, thus, the only remedy available to the petitioner is to take recourse to civil court or to the arbitration clause. This is not a case where the petitioner is claiming any damages or monetary relief on account of some breach of the contract. Thus, this petition is maintainable.

57. The contention of the respondent No. 1 that the petition has become infructuous is also not tenable as the petitioner has sought for a writ in the nature of mandamus directing the respondent No. 1 to issue a delivery order for supply of coal through the respondent No. 2. The petitioner has declined the same by order dated 26/27 June, 2007. Thus, the said order is still in existence, therefore, it cannot be held that this petition has become infructuous on the ground that the petitioner on 9.4.2007 (Annexure R-1/1) has made a request to supply some quantity of coal and to issue delivery of the coal through M/s Chhattisgarh Power and Coal Beneficiation Ltd. It was done only to save the project from being closed on account of lack of washed coal for a limited period. The grievance of the petitioner still survives.

58. The contention of the petitioner with regard to the nature of status quo order dated 20.1.2005, merits acceptance. It is evident that this Court on 24.4.2003 and 9.5.2003 in W.P. No. 1264/2003 injuncted the respondent No. 2 from raising any construction initially, and thereafter, it was modified by permitting to raise the construction up to the main building up to the level of setting up of the machinery. The Civil Judge, Class II, Katghora in Civil Suit No. 90-A/2004 passed a status quo order on 20.1.2005 in the context of the prayer made in the title suit and the prayer made in the interim application. The said prayer made in the civil suit reads as under:

13. The plaintiff prays for following reliefs:

(a) A decree for declaration be passed that as per provisions of the Act, 1957 the suit land is vested land of the plaintiff company and the plaintiff company has the ownership and possessory rights over the suit land.

(b) A decree for permanent injunction be passed that defendant No. 2 will not raise his construction after cutting any kind of tree standing over the land in possession of the plaintiff.

59. The pleadings and prayer in the application under Order 39 Rule 1 and 2 read

with Section 151 C.P.C., in the pending suit reads as under:

2. That, the plaintiff apprehends that Defendant No. 2 during the pendency of the suit may affect the plaintiff's interest by cutting the remaining trees standing over the suit land. Even otherwise, cutting of trees at random may affect the environment. On account of aforesaid acts of the defendant, the irreparable loss which would be suffered by the plaintiff cannot be compensated in terms of money.

3. If during the pendency of the proceedings the plaintiff restrains defendant No. 2 from cutting the trees standing on the suit land, then the balance of convenience shall be in favour of the plaintiff.

Therefore, prayed that defendant No. 2 be restrained through temporary injunction and it may be ordered that he should not cut the trees standing over the suit land and should take it away by cutting it and further restrained from doing such an act which may cause harm to the suit land in any manner and affect the interest of the plaintiff.

60. In the context of the above stated prayers the Civil Judge Class II, Katghora has passed the order dated 20.1.2005 to maintain status quo, as stated in para 14 of this judgment/order. It appears that the interim order was passed to maintain the status quo in respect of cutting of the trees. In respect of construction of the washery plant, this Court in W.P. No. 1264/2003 passed two orders on 24.4.2003 and 9.5.2003. The said orders were stayed by the Supreme Court on 27.11.2006 in S.L.P.(C) No. 20238/2006 Maruti Clean Coal & Power Ltd. v. B.L. Wadhera and Ors. on 27.11.2006. Thus, there is no injunction or an order restraining the respondent No. 2 from constructing the washery plant or operation thereof. According to learned Counsel for the respondent No. 2, the plant has been fully constructed and is in operation, in accordance with the washery policy. (Annexure P/14)

61. It is well settled principle of law that an order is to be read and understood in the context of the pleadings and prayers of the petition/application. See : Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors. 9, Union of India and Anr. v. Manik Lal Banerjee 10, Dhodha House v. S.K. Maingi 11, and Inderpreet Singh Kahlon and Ors. v. State of Punjab and Ors. 12. Thus having regard to the pleadings and the prayers, as stated above, in the suit and in the application for interim relief, it is clear that the status quo order dated 20.1.2005 is only in respect of cutting of trees. As the orders dated 24.4.2003 and 9.5.2003, passed by this Court in W.P. No. 1264/2003, to restrain construction of washery plant on the land in dispute, were stayed by the Supreme Court on 27.11.2006 in S.L.P.(C) No. 20238/2006 Maruti Clean Coal & Power Ltd. v. B.L. Wadhera and Ors., thus the order dated 20.1.2005, passed by the Civil Court, Katghora in Civil Suit No. 90-A/2004 cannot have overriding effect on the order passed by the Supreme Court.

62. The order of allotment of the land in dispute, to the respondent No. 2 by the

State Government cannot be held as illegal or unauthorized, as it is well settled that an order is a valid order till it is quashed or declared by any superior authority or a Court of law, as illegal or invalid. See : Greater Kailash Part II Welfare Assn. and Ors. v. DLF Universal Ltd. and Ors. 13 Thus, the owner of a plot of land is entitled to use and utilize the same for any lawful purpose and to erect any construction thereupon in accordance with the existing rules. So long as such owner does not contravene any of the provisions which restrict his use of the plot in any manner, he cannot be prevented from utilizing the same in accordance with law. The order allotting the land in dispute to the respondent No. 2 is still valid and as such the respondent No. 2 is entitled to use and erect any construction in accordance with the existing rules.

63. Without expressing any opinion on the validity of the allotment of land to the respondent No. 2 by the Government of Chhattisgarh vide order dated 5.12.2002, pending consideration in the public interest litigation petitions, namely Writ Petitions Nos. 1264/2003 AloK Nigam v. Union of India and Ors. 1382/2003 Sanjay Shrivastava and Ors. v. State of Chhattisgarh and Ors., and 4147/2003 Rashtriya Koyla Khadan Mazd. Sangh and Ors. v. State of Chhattisgarh and Ors, and on the title suit being Civil Suit No. 90-A/2004, pending consideration before the Civil Court, Katghora, I am not concerned about the title of the land and the validity of the allotment of land by the State Government, that may be examined and decided by the Courts, wherein said disputes are pending. It would be open to the parties to agitate all the pleadings, factual and legal, before the respective Courts.

64. In view of the reasons mentioned herein above, this Court is of the considered opinion that the respondent No. 1 is not justified in declining to issue delivery order for supply of coal to the petitioner through the respondent No. 2 for washing of coal. Thus, the said order dated 26/27.6.2007 is quashed. It is held that the petitioner is entitled to receive the delivery of coal in accordance with the Coal Supply Agreement from the respondent No. 1, through the respondent No. 2. It is ordered accordingly.

65. With regard to the erection and operation of washery plant of the respondent No. 2, this Court is not passing any order or expressing any opinion. Erection and operation of the washery plant of the respondent No. 2 shall be in accordance with the provisions of law and the washery policy. This order may not be treated as granting any sanction to the respondent No. 2 for erection and operation of the washery plant, if any, as the same shall be subject to the statutory orders and notifications, as required for operation of the same.

66. Accordingly, this petition is allowed to the above extent.

In the facts and circumstances of the case, there shall be no order as to costs.